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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

NO. 71-459

ISBRANDTSEN TANKERS, INC.,
Petitioner,

vs

PRESIDENT OF INDIA, REPRESENTED BY THE DIRECTOR GENERAL OF THE INDIA SUPPLY MISSION,
Respondent.

BRIEF IN OPPOSITION TO GRANT OF WRIT OF CERTIORARI

Eberhard P. Deutsch
Attorney for Respondent
President of India
1800 Hibernia Bank Building
New Orleans 70112.

Deutsch, Kerrigan & Stiles
H. Barton Williams
Charles L. Trowbridge
Of Counsel.

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In its Second Amended Complaint, petitioner sought detention damages (outside the scope of the charter-party) alleged to have been "caused by the Indian Government, including the Central Government, the departments of that Government, including the India Supply Mission and the port authorities of Calcutta, acting in concert . . ."

In its answer, by way of a "Second, Separate and Complete Defense to Plaintiff's (petitioner's) Second Amended Complaint", respondent pleaded "that if any (such) delays were experienced . . . and such delays were caused, in whole or in part by" India, "then such transaction shall have occurred, been caused by,

or contributed to, in whole or in part, by the defendant in its official and public capacity as an independent sovereign within the confines of its own jurisdiction and territory and by reason of the foregoing, no liability exists since said transaction was an Act of State".

In its suggestion of immunity, filed in the record by the United States Attorney at the direction of the Attorney General, the Department of State advised the Court that it "considers that plaintiff's claim for damages for detention set forth in the second cause of action draws into issue acts of Indian Government officials which were governmental rather than commercial in nature. In consequence, the Department recognizes and allows the Indian Government's immunity from suit with respect to plaintiff's claim for detention damages."

The District Court sustained respondent's motion to dismiss that cause of action, and the Court of Appeals affirmed.

In *Ex Parte Republic of Peru*, 318 US 578, 587, this Court said that when the Department of State files a suggestion of immunity in a case "it is of public importance that the action of the political arm of the Government taken within its appropriate sphere be promptly recognized, and that the delay and inconvenience of a prolonged litigation be avoided by prompt termination of the proceedings in the district court. . . ."

And the Court continued (p. 589): "We cannot say that the Republic of Peru has waived its immunity. It

has consistently declared its reliance on the immunity, both before the Department and in the district court. . . . The certification and the request that the vessel be declared immune must be accepted by the courts . . . [I]t became the court's duty, in conformity to established principles, to release the vessel and to proceed no further in the cause."

The case is accordingly not one "of first impression", as counsel for petitioner suggest, but is governed by well-established precedent in this court.

It is respectfully submitted that the application for a writ of certiorari should be denied.

October, 1971

Eberhard P. Deutsch
Attorney for Respondent
President of India
1800 Hibernia Bank Building
New Orleans 70112

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Of Counsel.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy hereof has this day been served on counsel for petitioner by mailing the same in an air mail post-paid envelope addressed to him at his office, 25 Broadway, New York City 10004.

New Orleans, Louisiana, October 18, 1971.

Original signed by:
H. Barton Williams